

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

DELSHUN KEGLEY, )  
PLAINTIFF, )  
VS. ) CV-02-H-1179-S *Jm*  
GINSBERG DERMATOLOGY CENTER, )  
DEFENDANT. )  
JUL 24 2002

ENTERED

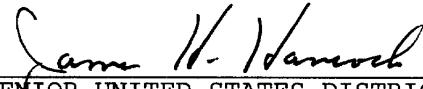
MEMORANDUM OF DECISION

The court has before it the May 9, 2002 complaint in which, charitably construed, plaintiff seeks to assert claims predicated upon her employer regarding her as having a physical impairment that substantially limits one or more of the major life activities of plaintiff. See 42 U.S.C. § 12102(2)(C). On May 30, 2002 defendant filed a motion to dismiss the action pursuant to Fed. R. Civ. P. 12(b)(6). Even a cursory review of the motion to dismiss, after reviewing the complaint he filed on behalf of plaintiff, should have told counsel for plaintiff that the motion to dismiss was not frivolous. On July 10, 2002 the court gave counsel for plaintiff until July 19, 2002 to file a response to the motion to dismiss. Counsel for plaintiff filed no response. The court concludes that such failure was simply because counsel had no response. In light of Sutton v. United Airlines, Inc. 527 U.S. 471 (1999) and Toyota Motor Mfg. Ky., Inc. v. Williams, 534 U.S. 184 (2002), the court agrees with

10

plaintiff's counsel's evaluation of his complaint. The complaint does indeed fail to state a claim upon which relief can be granted, and an order granting the motion and dismissing the action will be entered.

DONE this 24<sup>th</sup> day of July, 2002.

  
James H. Damroch  
SENIOR UNITED STATES DISTRICT JUDGE